

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: NATIONAL PRESCRIPTION,
OPIATE LITIGATION

MDL NO. 2804

Case No. 17-MD-2804

Judge Dan Aaron Polster

THIS DOCUMENT RELATES TO:

Rees v. McKesson Corporation, et al.
MDL Case #1:18-OP-45252

DeMaro v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45465

Delancey v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45480

Wood v. Purdue Pharma L.P., et al.
MDL Case #1:18-OP-45264

Cruz v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45466

Stewart v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45481

Salmons v. Purdue Pharma L.P., et al.
MDL Case #1:18-OP-45268;

Paul v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45467

Shewmake v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45482

Ambrosio v. Purdue Pharma L.P., et al.
MDL Case #1:18-OP-45375

Lechuga v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45468

Weatherwax v. Purdue Pharma, LP., et al.
MDL Case No. #1:19-op-45483

Whittley v. Purdue Pharma LP., et al.
MDL Case #1:18-OP-45598

Brumbarger v. Purdue Pharma, LP., et al.
MDL Case No. #1:19-op-45469

Martinez v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45484

Roach v. McKesson Corporation, et al.
MDL Case No. #1:18-OP-45662

Means v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45470

Warren v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45486

Hunt v. Purdue Pharma L.P., et al.
MDL Case No. #1:18-OP-45681

Peterson v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45472

Carlson v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45487

Hanlon v. Purdue Pharma L.P., et al.
MDL Case No. #1:19-op-45052

Hampel v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45473

Flach v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45488

Frost v. Purdue Pharma L.P., et al.
MDL Case No. #1:18-op-46327

Whittaker v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45475

Ivie v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45489

Moore v. Purdue Pharma L.P., et al.
MDL Case No. #1:18-op-46305

Tuttle v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45476

Cherry v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45490

Artz v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45459

Hamawi v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45477

Ortiz v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45492

Rodriguez v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45463

Gauthier v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45478

Meinecke v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45493

Ellis v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45464

Simonson v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45479

Brant v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45494

Williams, v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45485

**JOINT MOTION FOR AN ADDITIONAL 60 DAY STAY OF ALL
REMAINING CLASS CERTIFICATION BRIEFING DEADLINES**

Plaintiffs in the above-captioned cases (“NAS Plaintiffs”) and Defendants identified below¹ respectfully request an additional 60-day stay of all remaining class certification deadlines in light of the ongoing COVID-19 pandemic. The parties requested an initial 60-day stay of all class certification deadlines on March 13, 2020. Dkt. 3226. The Court granted that motion on March 16, 2020. The current deadlines require that the parties complete outstanding depositions by June 8, with Defendants’ opposition to Plaintiffs’ motion for class certification being due June 8 and Plaintiffs’ reply on July 17. Since the Court’s order, however, the circumstances necessitating the initial stay have not meaningfully improved. In fact, they have worsened.

When the parties requested the initial 60-day stay, there were approximately 2000 COVID-19 cases in the United States; today there are over 1.1 million cases, over 68,000 COVID-19 related deaths, and 42 states plus the District of Columbia have issued stay-at-home orders, most of which are still in full effect, and apply to attorneys, witnesses, and third-party subpoena recipients alike.² These circumstances have created significant obstacles to performing discovery on new Plaintiff Ashley Poe and have rendered completing the remaining fact and

¹ Certain defendants that may be named in the above-captioned cases or soon to be filed amended pleadings are not subject to personal jurisdiction in some or all of these cases, in which responsive pleadings are not yet due pursuant to the Court’s orders. Defendants submit this filing as instructed by the Court but subject to, and without waiver of, all defenses, including lack of personal jurisdiction, no service of process, or ineffective service of process, in each case.

² See CDC, *Case of Coronavirus Disease (COVID-19) in the U.S.* (last updated April 25, 2020) available at <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>; Sarah Mervosh et al., *Which State and Cities Have Told Resident to Stay at Home*, N.Y. TIMES (last updated April 20, 2020), available at <https://www.nytimes.com/interactive/2020/us/coronavirus-stay-at-home-order.html>; Sarah Mervosh et al., *See Which States Are Reopening and Which Are Still Shut Down*, N.Y. TIMES (last updated May 1, 2020), available at <https://www.nytimes.com/interactive/2020/us/states-reopen-map-coronavirus.html>.

expert depositions infeasible due to burdens placed on the witnesses by COVID-19. An additional 60-day stay is required to permit the parties to collect outstanding records and to allow circumstances to improve before the remaining expert and fact witness depositions necessary to the parties' class certification briefs can reasonably take place.

Complications arising from the identification of Ashley Poe as a class representative warrant an additional 60-day stay. The parties must conduct full discovery on Ms. Poe. Plaintiffs did not provide Defendants with records release forms for Ms. Poe or her child until April 17, 2020. Defendants have now requested medical, school, and social services records from numerous entities in Ohio and Washington. Under ordinary circumstances, it takes several weeks to receive responses to Defendants' records requests, which could not be issued without these releases. But given that many doctors' offices, hospitals, pharmacies, schools, and local government agencies are now either shuttered or overwhelmed, it will take considerably longer to receive them under the current circumstances. Ms. Poe and her child have received medical services in both Ohio and Washington. Many Ohio health care providers have been closed or are operating in a very limited capacity since Defendants received the Poe releases; Ohio healthcare providers could not even begin to reopen their offices for "non-essential surgeries and procedures" until May 1.³ Washington healthcare providers are still required to delay many non-urgent procedures.⁴ Once Defendants receive complete responses to these record requests,

³ See Ohio Dep't of Health, *Director's Stay Safe Ohio Order* (April 30, 2020) available at <https://coronavirus.ohio.gov/static/publicorders/Directors-Stay-Safe-Ohio-Order.pdf>.

⁴ See Office of the Governor, State of Washington, Interpretive Statement Related to Proclamation by the Governor 20-24, Restrictions on Non-Urgent Medical Procedures (Apr. 29, 2020), available at <https://www.governor.wa.gov/sites/default/files/Non-Emergent%20Procedure%20Interpretive%20Statement%204.29.20%20%28tmp%29.pdf>.

additional time will be needed to review the records and then schedule and depose Ms. Poe and any other relevant witnesses.

In addition to the complications described above, significant and ongoing obstacles created by the COVID-19 response make completing the remaining depositions infeasible. First, the two fact witnesses in this case who remain to be deposed are single parents of young children with significant caretaking responsibilities. At this time, they cannot legally (due to stay-at-home orders) or safely (due to risk of virus spread) arrange for alternate childcare. This is particularly true for Ms. Artz who is a member of a high-risk group due to a brain tumor diagnosis. Accordingly, neither Ms. Poe nor Ms. Artz can sit for depositions under the current circumstances.

Second, the expert witnesses remaining to be deposed also have significant constraints on their time and capacity that render it problematic or impractical for them to prepare and sit for a deposition before the current deadline. The experts to be deposed are physicians and epidemiologists, several of whom are involved in the medical response to COVID-19, including through work in the neonatal intensive care unit. Deposing these experts at this time is not in the best interest of their patients or the community at large.

Finally, Defendants may also need to depose medical professionals who provided relevant care to Ms. Poe, Ms. Artz, or their children. These individuals—whom Defendants cannot identify without reviewing Ms. Poe's complete records and deposing Ms. Poe and Ms. Artz—might not agree to sit for depositions under the current circumstances, especially considering they have no ties to either side of this case. Like the expert witnesses, these individuals may be working on the front lines of the COVID-19 pandemic and have limited or no availability to prepare or sit for a deposition.

For all of these reasons, the parties request that the Court set the following revised scheduling deadlines:

	Current Deadline	Proposed Deadline
Deposition of Defendants' Expert Witnesses	June 8, 2020	August 7, 2020
Defendants' Opposition to Class Certification	June 9, 2020	August 10, 2020
Plaintiffs' Reply in Support of Class Certification	July 17, 2020	September 15, 2020

Dated: May 5, 2020

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CERTIFICATE OF SERVICE

A copy of the foregoing was filed via the Court's electronic filing system on May 5, 2020. Notice of this filing will be sent by e-mail through the Court's electronic case-filing system to all counsel of record.

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